

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**BOARD OF ZONING ADJUSTMENT**



Application No. 13419 of Watterston House Associates, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Sub-paragraph 3101.414 to use all floors of the subject premises as an office for a non-profit organization and for a variance from the 10,000 square feet of gross floor area requirements (Sub-paragraph 3101.414 (2) ) in an R-4 District at the premises 224 - 2nd Street, S. E., (Square 762, Lot 7).

HEARING DATES: February 11, May 20 and October 21, 1981  
DECISION DATES: April 1, July 1, September 2 and  
November 4, 1981

FINDINGS OF FACT:

1. The subject site is located on the east side of 2nd Street, S.E., between Pennsylvania Avenue to the north and C Street to the south. It is known as premises 224 2nd Street S.E. The site is located in an R-4 District.

2. The property is rectangular in shape and consists of 7,182 square feet of land area. The site is developed with a three story semi-detached dwelling of brick construction built between 1802 and 1819 for use as a single family residence. The dwelling contains approximately 5,275 square feet of gross floor area, and has been vacant since 1970. There is a two story carriage house and a two-car garage to the rear of the lot which front on a twenty foot wide alley.

3. To the north, immediately adjacent to the site, there is a four story apartment house followed by row dwellings in the R-4 District. Further north, on the east side of 2nd Street, there are commercial uses including a carry-out, laundry, and Interstate Federal Savings bank, in a C-2-A District. The Pennsylvania Avenue frontage of the subject square is zoned C-2-A and developed with commercial uses. To the east is a twenty foot wide alley, followed by the rear of row dwellings in the R-4 District. To the south are row dwellings and the six-story Coronet Apartment house on the northeast corner of 2nd Street and C Street in R-4 District. To the west is Second Street, which has two-way traffic and parking governed by the two hour, non-resident, on-street parking program, followed by the garage entrance to the Library of Congress Annex in an R-4 District.

4. The subject application is brought as a special exception under Sub-paragraph 3101.414 of the Zoning Regulations which allows the use of existing residential buildings and the land on which they are located by a nonprofit organization, if such buildings are listed in the District of Columbia's Inventory of Historic Sites or are located within a district, site, area, or place listed on the District of Columbia's Inventory of Historic Sites, if the gross floor area of the building in question not including other buildings on the lot, is 10,000 square feet or greater.

5. A party in opposition, Mr. Larry Monaco, made a preliminary Motion to Dismiss the application on the grounds that Sub-paragraph 3101.414 was invalidly adopted by the Zoning Commission since it had not been promulgated pursuant to the D. C. Administrative Procedures Act and the Zoning Act. The opposition party wanted the Motion on record although he was aware that the Chair, in previous BZA applications, had denied similar Motions. The Chair ruled that the BZA was not the proper forum to decide whether the Zoning Regulations had been properly adopted, and denied the motion.

6. The subject premises, the Watterston House, was designated as a historic landmark by the Joint Committee on Landmarks of the National Capital as of June 7, 1979.

7. The gross floor area of the subject building consists of approximately 5,275 square feet. The applicant therefore seeks a variance from the requirements of Paragraph 3101.414.

8. At the time of the Public Hearing held on February 11, 1981, the applicant did not have a specific nonprofit organization that would be occupying the building. The applicant testified, however, that the proposed use would not adversely affect the use of neighboring property and that there would be no adverse traffic impact. In the absence of a specific tenant, or other specific information describing how the building would be occupied, the Board was unable to accept the applicant's testimony in this regard.

9. The subject property is located in a square characterized by a mix of residential and commercial uses. The proposed non-profit office use is a relatively low intensity use and will not adversely affect the uses of neighboring property, many of which include a higher intensity residential and commercial use.

10. The applicant is providing two off-street parking spaces on the subject site. In addition there is on-street parking in the immediate area of the property to accommodate visitors. Third, C, and 2nd Streets allow two hour parking

from 7 a.m. to 6:30 p.m., Monday through Friday, and Pennsylvania Avenue has metered parking.

11. Visitors to the site can be accommodated by Metrorail or other public transportation. The subject site is located within three blocks of the Capitol South Metro station and there is excellent bus service on Pennsylvania and Independence Avenues.

12. In accordance with the provisions of Sub-paragraph 3101.4144, no exterior alterations or additions will be made to the subject premises without the prior approval of the Board. In addition, pursuant to D.C. Law 2-144, the Historic Landmark and Historic District Protection Act of 1978, any such exterior alteration would have to be approved by the Joint Committee on Landmarks prior to issuance of a permit therefor.

13. The property is affected by several exceptional and extraordinary conditions. The lot size is three and a half times the R-4 standards for a row dwelling, there is an existing building on the site and, in addition to the property's location in an historic district, the building itself is designated as a Category II Landmark.

14. There are practical difficulties inherent in the property itself. The location and large size of the existing building combine to make it unsuitable for use as a single family residence. The surrounding neighborhood contains a mix of residential and commercial uses and the building faces the driveway entrance to the parking garage for the Library of Congress Annex. The massive size of the building makes it prohibitively costly not only to purchase, but to maintain.

15. There are further practical difficulties involved in conversion of the building to multi-family use. Because the building was designed as a single family residence, its interior layout and spatial arrangement make it practically difficult to convert the building to multi-family use. Although seven units would be permitted under R-4 standards, it is simply not possible to create these units without redesigning the building. The building is four stories in height, and the fire and building code standards would require substantial alteration of the building in order for it to be used as a multi-family dwelling. The interior features of the historic structure, including decorative mantels and curved archways would be destroyed, as would the existing stairway. New plumbing to service new bathrooms and kitchens as well as the addition of an elevator, would totally destroy the architectural character of the interior of the building. Further, the changes required would cause irreparable damage to a landmark structure.

16. The size of the units created by conversion to multi-family use would greatly exceed Capitol Hill standards. The large size of the units in addition to the location of the property, would make the units unmarketable.

17. By the Zoning Commission Order No. 83, dated January 26, 1974, the Zoning Regulations were amended to permit existing residential historic buildings to be used by a non-profit organization. The purpose of the amendment was

"...to provide for the continued use and maintenance of large residential buildings within historic sites and districts and...to maintain and preserve large residential buildings of historical and architectural significance which are not within historic sites and districts...."

In amending the Regulations, the Zoning Commission found that:

"The use of such buildings for nonprofit organizations is an appropriate means of providing for the preservation of such buildings, thereby promoting the public health and general welfare...."

18. The proposed use of the building as offices of a non-profit organization would accomplish the purpose for which Sub-paragraph 3101.414 was implemented. Namely, it assures the continued use and preservation of a landmark structure. Accordingly, the Board finds that the requested variance carries out the purpose and intent of the Zoning Regulations

19. A representative of ANC 6B appeared at the February 11, 1981 hearing in opposition to the application as did Mr. Lawrence Monaco appearing individually and as a representative of the Capitol Hill Restoration Society. The opposition testified that the 10,000 square feet requirement was a bare minimum that had to be met in order to qualify for the requested special exception, that the applicant's only basis for relief was economic infeasibility and, as such, an improper ground, and that the proposed use would adversely impact on neighboring residential properties.

20. During the course of the February 11, 1981 Public Hearing, the Board requested that the applicant submit additional information for the record. In response to that request and to the issues raised at the public hearing, the applicant filed a letter on March 18, 1981 containing the following information:

- (a) Case law on the inapplicability of the self-created hardship rule to area variance cases.

- (b) A list of recent property sales in Square 762.
- (c) The recommendation of the Joint Committee on Landmarks dated October 23, 1980, granting preliminary approval to the conceptual design of the development plans for Lot 7.
- (d) Photographs of the interior of the building.
- (e) A photographic copy of the Library of Congress photograph of the subject building which was introduced at the public hearing.
- (f) A list of contacts made by the applicant with the ANC 6B and the Capitol Hill Restoration Society.
- (g) Information on the purchase price and current use of the premises 133 C Street, S.E.

21. The Board also requested during the Public Hearing that the OPD submit a report on the application. In addition to a general report the Board directed that the OPD evaluate the cost figures for the acquisition and improvement of the site and the reasonableness of the anticipated return figures from the use of the property, sale or rental.

22. On March 26, 1981, Mr. Monaco filed two motions, one to require compliance with the Board's service order and the second to request further hearing on evidence that a reasonable offer had been submitted to the applicant to buy the subject premises for residential use.

23. On March 31, 1981, the applicant filed a response to Mr. Monaco's motions and also requested a further hearing in order to present new evidence of a specific nonprofit organization that would occupy the premises.

24. At its Public Meeting held on April 1, 1981, the Board discussed the application for a special exception and a variance to permit the use of the premises at 224 - 2nd Street, S. E. as the offices of a nonprofit organization. The Board deferred a decision on the application at that time and scheduled a further hearing on May 20, 1981, limited to the following issues:

- (a) Responses by the parties to all the post hearing submissions, including the report of the Office of Planning and Development and information submitted by the applicant.
- (b) New evidence of Mr. Monaco that the subject property can be put to R-4 uses.
- (c) New evidence of the applicant of a specific

nonprofit organization that will occupy the subject premises.

25. On May 20, 1981, in addition to the subject application, the Board also heard Application No. 13482 brought by the same applicant and concerning the same property. That application requested variances from the lot occupancy requirements, the rear yard requirements and the front yard provisions for the construction of two flats on one lot with an existing dwelling and carriage house using theoretical lot lines. The applicant advised the Board that if application No. 13419 were granted, then application No. 13482 would become Moot. The Board reserved decision on Application No. 13482.

26. The OPD, by report dated March 16, 1981, recommended that the application be denied. The OPD reported that the Zoning Regulations are specific in the minimum gross floor area required for this type of special exception. The OPD was of the opinion that the granting of the requested 4,725 square feet variance from the 10,000 square foot minimum requirement would circumvent the integrity, purpose and intent of the Zoning Regulations. The OPD was of the opinion that the practical difficulties, economic hardship, cited by the applicant, which relate to the unmarketable single family design of the premises, are self imposed. The OPD noted that the landmark status of the building does not preclude multi-family residential use of the premises. The applicant had not presented evidence of unsuccessful efforts to dispose of the property as a single family residence, a flat or other permitted uses in the R-4 District, such as an advertisement through a realtor for a reasonable length of time. The OPD did not feel the proposed office use of the premises meets the requirements of the Zoning Regulations.

27. In addition, the OPD reported that it had been advised by a commercial tax assessor in the Office of Finance and Revenue that:

- (1) The debt service on the property is substantially greater than is typical of other single-family row or semi-detached dwellings in the Capitol Hill neighborhood. This is due to the substantial expenditures for purchase price plus subsequent improvements. The large size of the premises, 5,275 square feet vs. typical three-story rowhouses at 1,500 square feet, plus its historical character and status, give the building a high value.
- (2) As a business venture, the economic analysis suggests a losing proposition either as a single family dwelling or in rental to a non-profit organization.

- (3) Office space rents in comparably located SP and C-1 Districts run about \$6 per square foot of floor area. The per-square-foot rent suggested in the economic analysis is roughly equal to the \$6 per square foot indicated for other areas. However, this carries only the debt service on the property and would not cover additional expenses such as taxes, utilities, insurance, etc. Consequently, the applicant would still be operating the property at a significant loss. If the applicant chose to raise rents to cover these costs, it might become difficult to lease the space, as the competing rents cited for other locations already make allowance for those costs and would still be \$6 per square foot.
- (4) It would appear that the nearest thing to an economically viable use of the property at this point is multi-family use.

28. The OPD filed a supplemental report dated May 15, 1981 in response to the applicant's supplemental submissions of March 18, 1981. The OPD again recommended a denial of the application. The OPD noted that the Capitol Hill Historic District is large, extending generally from the U.S. Capitol on the west to 13th/14th Streets, N. E./S.E., on the east; and from the Southeast freeway on the south to E Street/Constitution Avenue on the north. The East Capitol Street Historic District constitutes a narrow extension of the historic district further to the east. Within this area are numerous apartment buildings together with the predominant pattern of row dwellings. Many of these apartment buildings exceed 10,000 square feet in floor area and are thus potentially eligible to qualify for conversion to nonprofit office use under the conditions of 3101.414. Given this large supply of residential buildings potentially qualifying for nonprofit office use, the OPD believes that variance relief should be granted sparingly. Although the subject building is unusually large for a row dwelling, it is also true that within the area historic district there are a number of other large row dwelling buildings which could potentially apply for variances. The incentive for office conversion is represented by the higher rents and lower operating costs of office space vis-a-vis residential space. The OPD concerned that numerous conversions would have the net result of imposing automobile commuting patterns, cumulative parking overload, and other objectional conditions contrary to the purposes and intent of the R-4 District and therefore of Sub-section 8207.1. Because of the large potential for nonprofit office conversions in this and other historic districts, the OPD believed that variance relief should be granted only sparingly.

29. As to the cash flow analysis, the OPD did not know whether the applicant's information of typical office rents at seventeen to twenty dollars per square foot is more accurate than the assessor's indication of six dollars per square foot. The assessor used C-2-A rents for general comparison. It is possible that nonprofit associations renting elegant townhouse structures pay higher rents than general office users in commercial strips. If obtainable office rents are seventeen to twenty dollars per square foot, nonprofit office rental would probably be much more profitable than residential use.

30. As to the physical impracticability of conversion to multifamily use, the OPD stated that it had not seen the interior of the premises and could not comment. However, numerous large, four-story row dwellings in the city have lent themselves to four ample-sized apartment units -- one per floor -- which might entail less structural work than the seven units mentioned by the applicant.

31. At the Public Hearing of May 20, 1981 the applicant pointed out the inaccurate and misleading statements contained in OPD's report. Specifically, OPD incorrectly stated that the applicant's economic analysis reflected a per square foot rent for office use roughly equivalent to \$6 per square foot and, on that basis, concluded that the proposed use was not economically viable. In fact, the correct figure is \$12 per square foot, thus making the proposed use economically viable.

32. The applicant also questioned OPD's figure of six dollars per square foot for office rents in comparably located SP and C-1 Districts. As the information filed by the applicant on March 18, 1981 clearly indicates, office space rentals in the Capitol Hill area range from \$17.50 to \$20 per square foot, not \$6 per square foot. Based on these competing rents, rental of the subject property for use by a nonprofit organization would be economically viable. Additionally, as the economic analysis prepared by the applicant indicates, sale of the building for use by a nonprofit organization would enable the applicant to realize a fifteen percent rate of return on its investment. The possibility of selling the building for use by a nonprofit organization was not discussed by OPD in its report, but provides further support for the conclusion that the proposed use would indeed be economically viable.

33. In response to OPD's statement that the requested variance would circumvent the integrity, purpose, and intent of the Zoning Regulations, the applicant pointed out that the inclusion of the 10,000 square foot minimum was based on the Zoning Commission's finding, at that time, that buildings of such nature have gross floor areas in excess of 10,000 square feet. In so finding, the Zoning Commission



did not intend that buildings of such nature could never have less than 10,000 square feet . This area requirement, similar to other area requirements in the Zoning Regulations such as the 900 square foot minimum lot area requirement, can be waived. Its purpose is to establish a standard of reference, not an inflexible rule. The Board so finds.

34. At the May 20, 1981 Public Hearing the applicant also submitted evidence of a specific nonprofit organization that proposed to occupy the building. The nonprofit organization was called the "Texas Office" and was the representative of the Governor of Texas in the District of Columbia.

35. The Texas Office would have a maximum of seventeen employees. In light of earlier testimony on the provision of two parking spaces on-site, the proximity of Metro and other public transportation, and the availability of short-term street parking to accommodate visitors, the Board finds that the amount and arrangement of parking spaces are adequate and so located to minimize traffic impact on the adjacent neighborhood.

36. Testimony was submitted on the activities and hours of operation of the Texas Office. Based on this information, the Board finds that the Texas Office's activities are primarily educational and that the proposed use is of relatively low intensity.

37. At the close of the May 20, 1981 Public Hearing, the Board requested that the applicant submit additional information for the record. In response to that request and to the issues raised at the Public Hearing Hearing, the Board finds as follows:

- (a) The proposed occupant of the subject premises, the Texas Office, is a nonprofit organization within the meaning of the Zoning Regulations in that it is "an organization organized and operated exclusively for religious, charitable, literary, scientific, community, or educational purposes," as required by the Zoning Regulations. Further, no part of its net income inures to the benefit of any private shareholder or individual. Pursuant to D. C. Sales Tax Exemption Number 806 - 12573 - 06 it is an exempt organization and, therefore, is not subject to sales taxes.
- (b) The definition of nonprofit organization in the Zoning Regulations does not preclude lobbying activities by such organizations.
- (c) In reviewing applications for a special exception under Sub-paragraph 3101.414, the Board's discretion is limited to determining whether the

proposed exception satisfies the requirements set forth in Sub-paragraph 3101.414. If the applicant meets its burden, the Board ordinarily must grant the application.

38. The Board is required by statute to give great weight to the issues and concerns of the ANC. In response to the issues and concerns raised by both the ANC 6B and the Capitol Hill Restoration Society during the course of the February 11, and May 20, 1981 public hearings, and by written submissions, the Board finds the following:

- (a) The 10,000 square feet of gross floor area requirement is an arbitrary figure. What the Zoning Commission had in mind in adopting Sub-paragraph 3101.414 was a structure of such size that it would be unreasonable to consider it for single-family use. By today's standards, 5,000 square feet is large. Additionally, the surrounding lot adds to the building and should be maintained.
- (b) The requested variance relief requires the showing of exceptional conditions which create practical difficulties. The exceptional situations here are the large lot size, the presence of an existing building, and the historic value of the building which combine to create practical difficulties. The only solution would be to request that the applicant increase the size of the building which is not only impractical, but which would irreparably damage the historic character of the building and lot.
- (c) The square in which the subject property is located is split-zoned and characterized by a mix of commercial and relatively high intensity residential uses. The proposed use is of relatively low intensity and will not adversely impact neighboring properties. The parking provided is adequate. The traffic generated would be minimal.
- (d) The historic restoration work undertaken by the applicant, including the replication of mantels and doors, is in keeping with the historic character of the structure.

39. At its Public Meeting held on July 1, 1981, the Board granted the application for a special exception and variance to permit the use of the subject premises as the offices of a nonprofit organization. In approving the application, the Board imposed three conditions:

- (a) No new building or structure shall be built on the premises known as Lot 7 in Square 762.
- (b) The carriage house and garage shall be only used for accessory uses to the principal use of the main building and shall not be used as offices.
- (c) Approval is limited to the Office of State Federal Relations of the State of Texas as the only non-profit organization to occupy the subject premises.

40. Subsequent to the Board's decision, the Texas House informed the applicant that it was no longer interested in the subject property for either rental or purchase. The property was placed back on the market and on August 25, 1981, the applicant filed a Motion for Further Hearing requesting the substitution of the Cato Institute, a non-profit organization registered with the U. S. Internal Revenue Service under Section 501(c)(3) of the Internal Revenue Code.

41. On September 2, 1981 the Board granted applicant's Motion for Further Hearing. The Notice of Public Hearing expressly limited the scope of the hearing:

"...to the applicant's request to modify the condition imposed by the Board at its July 1, 1981 meeting, to limit the office use of the property to the Office of State-Federal Relations of the State of Texas."

42. The testimony and evidence presented at the Public Hearing indicated that the Cato Institute is a public policy research foundation registered under Section 501(c)(3) of the Internal Revenue Code. Two letter rulings by the IRS dated March 5, 1975 and February 15, 1977 were attached to the applicant's statement as evidence of Cato's 501(c)(3) status.

43. The Articles of Incorporation and By-Laws of the Cato Institute indicate that the organization qualifies as a nonprofit organization within the meaning of Section 1201 of the Zoning Regulations in that it is

".. an organization organized and operated exclusively for religious, charitable, literary, scientific, community, or educational purposes... provided no part of its net income inures to the benefit of any private shareholder or individual."

44. A representative of the Cato Institute appeared at the public hearing and testified as to the nature of the proposed use. According to his testimony, the Cato Institute is a public policy research foundation dedicated

to preserving and extending social and economic freedom. Its stated aim is to broaden public policy debate through the sponsorship of programs designed to assist both the intelligent layman and scholar in analyzing questions of political economy. Newsletters, magazines, radio, books and other outlets are utilized.

45. Approximately ten employees are expected to occupy the subject building and the projected growth is for a maximum of fifteen employees. Using standard transportation formulas, the maximum of fifteen employees would only require two spaces. Given the site's proximity to Metro and public transportation, the two spaces provided on-site are adequate.

46. The proposed use is expected to generate minimal visitors to the site, primarily scholars coming to consult with the analysts at the Institute. Most of these visitors would be accommodated by Metrorail or other public transportation. Additionally, Third, C, and Second Streets allow two hour parking from 7:00 A.M. to 6:30 P.M., Monday through Friday, and Pennsylvania Avenue has metered parking.

47. In accordance with the requirements of Sub-paragraph 3101.4143, no goods, chattel, wares or merchandise will be commercially created, exchanged, or sold therein, except for the sale of publications, materials, or other items related to the purposes of the Cato Institute.

48. The proposed use will serve the public interest in preservation by returning a long vacant landmark structure to productive and secure use. The relatively low intensity use proposed is in keeping with the intent of the Zoning Regulations and will not adversely affect the uses of neighboring property, many of which include a higher intensity residential and commercial use.

49. Mr. Lawrence Monaco appeared at the public hearing in opposition to the application. In his testimony, Mr. Monaco raised the following issues: (a) the current status of the Cato Institute as a 501(c)(3) organization; (b) whether the Cato Institute is entitled to receive a certificate of authority to do business in the District of Columbia; (c) the traffic impact of the proposed use; and (d) the introduction of an office use into a residential neighborhood. At the public hearing Mr. Monaco also filed a Motion for Further Hearing requesting that the Board hear new evidence on the Master Plan for the Capitol Grounds.

50. At the close of the Public Hearing, the Board requested that the applicant submit additional information for the record in response to two issues raised: (1) the current status of the Cato Institute as a nonprofit organization under 501(c)(3) of the Internal Revenue Code and (2)

whether the Cato Institute is entitled to receive a certificate of authority to do business in the District of Columbia as a nonprofit organization in light of the fact that it issues stock. The Board also left the record open for both the applicant and Mr. Monaco to respond to each other's submissions.

51. By letters filed October 28th and October 30th the applicant submitted the following additional information and responses for the record:

- (a) During an extensive audit of the organization covering the fiscal years ended November 30, 1976, November 30, 1977, and November 30, 1978, the expanded operations and purposes of the Cato Institute were thoroughly examined by the Internal Revenue Service. Following its investigation, the IRS prepared a detailed memorandum which concluded that Cato is a tax exempt organization within the meaning of Section 501 (c) (3) of the Code and the applicable Regulations. Accordingly, the Cato Institute does qualify as a nonprofit organization within the meaning of Section 1202 of the Zoning Regulations. The Board so finds.
- (b) The question whether Cato is entitled to receive a certificate of authority is not a zoning issue. The Board so finds. Further, under the applicable treatise and case law, the fact that Cato has issued stock will not preclude its obtaining a certificate of authority.

52. On October 28, 1981 the applicant also filed its Opposition to the Motion for Further Hearing on the grounds that: (a) no issue requires further hearing; (b) the Master Plan for the Capital Grounds submitted was simply a proposal, not yet formally adopted by Congress; and (c) the proposed use is entirely consistent with the goals and objectives of the Master Plan.

53. Having reviewed the additional information filed by both the applicant and Mr. Monaco, the Board finds that Cato does qualify as a nonprofit organization within the meaning of the Zoning Regulations. As to the parking issue raised by Mr. Monaco, the Board finds that there is ample evidence of record to clearly show that there will be no adverse traffic or parking impact from the proposed use. As to the Master Plan issue, the Board finds that it is not required by the Regulations to take the plan into account in deciding an application for a special exception. The Motion for Further Hearing on the Master Plan issue was denied by the Chairman.

CONCLUSIONS OF LAW AND OPINION:

Based upon the findings of fact and evidence of record, the Board concludes that the requested relief is a special exception the granting of which requires the applicant to prove that it has complied with the requirements of Sub-paragraph 3101.414 of the Zoning Regulations. The Board concludes that the applicant has met the burden of proof and that the proposed use meets the specifications of the Zoning Regulations.

The occupant of the building, the Cato Institute, qualifies as a nonprofit organization within the meaning of Section 1202 of the Zoning Regulations. The building is located in the Capitol Hill Historic District and is a registered Category II landmark. The Board concludes that the proposed use is in harmony with existing uses and structures on neighboring property, many of which include a higher intensity residential and commercial use. The amount and arrangement of parking spaces are adequate and so located to minimize traffic impact on the adjacent neighborhood. No commercial merchandise will be manufactured, sold or exchanged on the subject premises except for publications or other materials related solely to the purposes of the nonprofit organization leasing the subject premises. No additions to the subject structure or major modifications to the exterior of it or the site will be made without prior approval of the Board.

The Board concludes that the requested variance from the 10,000 square feet of gross floor area requirement is an area variance, the granting of which requires the showing of a practical difficulty inherent in the property itself upon the owner. The Board concludes that the existence of a structure on the site creates such a practical difficulty. Without the requested variance relief the only solution would be to ask the owner to increase the size of the building. The Board is of the opinion that the 10,000 square feet figure is arbitrary and that what the Zoning Commission had in mind when it adopted Sub-paragraph 3101.414 was a structure of such size that it would be unreasonable to consider it for single-family use. By today's standards, 5000 square feet is large.

The Board is of the opinion that the subject building is an impressive inner-City Capitol Hill mansion and that the building and surrounding grounds should be preserved. In adopting Sub-paragraph 3101.414 the Zoning Commission had in mind alternative uses for such buildings and the fact that other R-4 uses could be put in this building does not preclude this use. The Board is also of the opinion that conversion to housing units would over-use the building and cause irreparable damage.

The Board further concludes that the approval of the application will be in harmony with the general purpose and intent of the Zoning regulations and Maps and will not tend to affect adversely the use of neighboring property in accordance with said Regulations and Maps. The Board concludes that it has afforded the great weight to the issues and concerns of the ANC.


Accordingly, it is ORDERED that the application is GRANTED subject to the following conditions:

1. No new building or structure shall be built on the premises known as lot 7 in Square 762.
2. The carriage house and garage shall be only used for accessory uses to the principal use of the main building and shall not be used as offices.
3. Approval is limited to the Cato Institute as the only non-profit organization to occupy the subject premises.

VOTE: 5-0 (Walter B. Lewis, Charles R. Norris, Douglas J. Patton and Connie Fortune to approve, William F. McIntosh to approve by proxy).

BY ORDER OF THE D. C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY

  
STEVEN E. SHER  
Executive Director

FINAL DATE OF ORDER: 21 JUL 1981

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF LICENSES, INVESTIGATIONS, AND INSPECTIONS.